

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4,
3035.5, 3035.6, 3035.7, 3035.8 and 3035.9

INITIAL STATEMENT OF REASONS/
PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or
Circumstance the Regulations are Intended to Address

These regulations are intended to address the obligations of the Secretary to adopt regulations to designate a seed potato certification agency that is qualified to certify seed potatoes as to their variety, quality, and freedom from pests and diseases, after consultation with the University of California and representatives of the seed potato industry of California.

Specific Purpose and Factual Basis

The specific purpose of existing Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8 and 3035.9 was to establish the standards to certify seed potatoes as to their variety, quality, and freedom from pests and diseases under a Seed Potato Certification Program operated by the Department. The factual basis for the determination by the Department that the repeal of these regulations and subsequent adoption of a new Section 3035 is necessary is as follows:

In 1995, the Department began working with the potato industry and the California Potato Research Advisory Board to review and revise its Seed Potato Certification Program. This was necessary due to a request to align the Department's Seed Potato Certification Program with those of other states. In 1997, the Department presented its review which proposed a number of revisions to the program and a possible increase in fees to be paid by the participants. The possible increase in fees was due to the Department's conclusion the program's operations were resulting in deficit spending. In 1997, the Department also met with the program's participants in Bakersfield, Stockton and Tulalake to review the possible solutions to the program's problems. These solutions included one or a

combination of the following: elimination of the program, increase in fees, reduced services and transfer of inspection work.

On June 24, 1998, the California Potato Research Advisory Board and commercial seed potato producers voted and requested the Department to take the necessary actions to transfer the inspection services to the California Crop Improvement Association.

To enable the transfer, it was necessary to change the statutory authority for the program. This was accomplished through a 1998 bill, Assembly Bill No. 2341. However, although the program requested an initial change in this regulation in 1999, for several subsequent years the Department assisted the California Crop Improvement Association with taking over the seed potato certification in California.

Since that time, a group composed of growers, government officials and industry representatives has developed a State National Harmonization Program for Seed Potatoes (SNHP). The development of the SNHP was the result of barriers to the international market opportunities faced by the U.S. seed potato industry which lacked a central control over pest management and seed certification in the U.S. This in turn, made the U.S. phytosanitary standards difficult to defend at a national level. The SNHP seeks to facilitate the U.S. international negotiations on market access for potatoes by: 1) developing a minimum set of pest management and certification standards for all states; and, 2) establishing a state commitment to those standards and establishing federal oversight over the implementation of the SNHP.

The SNHP is an agreement between the State and the United States Department of Agriculture to establish minimum standards of seed potato certification set by state authority and to develop a framework for pest management cooperation. The SNHP outlines the uniform requirements for state seed potato certification systems including tissue culture, limited generation systems, field inspections, post harvest testing, state inspections, etc.

During the Department's review of the November 30, 2006 SNHP, it was discovered that specific regulatory authority still had not been transferred to the California Crop

Improvement Association. In order to complete this process, it is now necessary to repeal existing Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8 and 3035.9 and adopt a new Section 3035.

This will ensure the certification standards contained in the SNHP and approved by the California Crop Improvement Association will govern the certification of seed potatoes in California under the By Laws of the association, and through the agreement by participants joining the association.

Existing law provides that the Secretary may, by regulation, designate as a seed potato certification agency, any person or agency that the Secretary finds is qualified to certify seed potatoes as to their variety, quality, and freedom from pests and diseases. In doing so, the Secretary shall consult with the University of California and representatives of the seed potato industry of California before approving the qualifications of any seed potato certification agency (Section 52651, Food and Agricultural Code).

The proposed repeal of existing Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8 and 3035.9; and, adoption of a new Section 3035 will establish that the California Crop Improvement Association is the California Seed Potato Certification Agency. The effect of this regulation will be to remove the State's specific regulatory authority for the certification of seed potatoes and transfer this authority to the California Crop Improvement Association.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Secretary of Food and Agriculture has determined that the proposed regulations do not impose a mandate on local agencies or school districts. The Secretary also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

The regulations pertaining to California Certified Seed Potatoes established a voluntary program that was funded by the participants. This action merely transfers the regulatory authority for the voluntary certification of seed potatoes in California to the California Crop Improvement Association.

The Department has made an assessment that the proposed amendment to the regulation would not: 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses within California; or, 3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Secretary of the Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following studies, reports, and documents in proposing the repeal of existing Sections 3035, 3035.1, 3035.2, 3035.3, 3035.4, 3035.5, 3035.6, 3035.7, 3035.8 and 3035.9; and, adoption of a new Section 3035:

Memorandum of January 8, 2007, from Susan McCarthy to Stephen Brown, "Seed Potato Certification Regulations," with the attached exhibits:

Exhibit 1-E-mail dated January 5, 2007, from Larry Teuber to Susan McCarthy.

Exhibit 2-"State National Harmonization Program MOU Template for Seed Potatoes," dated November 30, 2006.

Exhibit 3- Memorandum of May 21, 1999 to Barbara Hass from Kathleen Harvey to Barbara Hass, "Seed Potato Certification Agencies," and the four attached items.

"Questions and Answers for the State National Harmonization Program MOU Template for Seed Potatoes," dated October 26, 2006.

"Quality Manual Template - State National Harmonization Program MOU Template for Seed Potatoes," dated October 26, 2006.